BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2017-32-E

IN RE:

3109 Hwy. 25 S. L.L.C. d/b/a 25 Drive-In and Tommy McCutcheon,	)	[Proposed] ORDER
Complainant/Petitioner,	)	
v.	)	
Duke Energy Carolinas, LLC	)	
Defendant/Respondent.	)	

I. INTRODUCTION

This matter is before the Public Service Commission of South Carolina (the "Commission") on the Complaint of 3109 Hwy 25 S. L.L.C. d/b/a 25 Drive-In and Tommy McCutcheon. ("McCutcheon" or "the Petitioner") seeking a determination that Duke Energy Carolinas, LLC., ("DEC" or "the Respondent") wrongly changed his electric rate in violation of S.C. Code Ann. § 58-27-830 and Commission Order E-976, as modified by *Payne v. Duke Power Co*. 304 SC 447 , 405 S.E. 2d 399 (1991), and improperly disconnected his power during the pendency of an ORS investigation. DEC is authorized by this Commission to be the exclusive provider of electric service for all areas previously provided service through the Greenwood County Electric Power Commission.

The Complaint requests that this Commission find that DEC acted in violation of E-976, and requests as relief that he be returned to the Greenwood rate, that he be granted reparations pursuant to S.C. Code Ann. § 58-27-960, and Attorney's fees pursuant to S.C. Code Ann. § 58-27-2410.

II. JURISDICTION

The Commission has jurisdiction over the Parties. The Complainant is a customer of an electrical utility and has submitted himself to the jurisdiction of the Commission pursuant to S.C. Code Ann. § 58-27-1940 and S.C. Code Ann. Regs 103-824. The Commission has jurisdiction over the Respondent through its actions as an electrical utility pursuant to S.C Code Ann. §§ 58-3-140, 58-27- 140 and S.C. Code Ann. Regs. 103-300.

The subject matter of Petitioner's Complaint consists of alleged violations of the Greenwood Rate Order E-976 issued July 13, 1966, as modified by the Supreme Court's holding review in *Payne v. Duke Power Co*. 304 SC 447, 405 S.E. 2d 399 (1991), and wrongful disconnection of his electrical service during the pendency of an ORS investigation, commenced pursuant to R. 103-345(B). The Commission has exclusive jurisdiction over the subject matter of this Complaint pursuant to S.C Code Ann. §§ 58-3-140(A), 58-24-140 (1) and R. 103-303. To the extent Respondent's policies and practices affected Petitioner's access to service under the Greenwood Rate, this case also falls within the Commission's jurisdiction as a "Rate Matter" as defined in S.C Code Ann. Regs. 103-302(9) [1].

III. PROCEDURAL HISTORY

The most recent order addressing eligibility for the Greenwood Rate is Commission Order E-976, which states in pertinent part:

> NOW THEREFORE, IT IS ORDERED JUDGED AND DECREED that Schedule A, Schedule B-L, Schedule SL, Industrial Power Rate and Municipal Power Rate, copies of which are attached to and made a part of this Order be, and the same are hereby approved for billing those customers transferred from Greenwood County so long as bills under these rates are lower than bills under approved Duke Power Company Rates; AND
>
> IT IS FURTHER ORDERED, that no new customer shall be billed under the attached rates, and that, whenever a customer is disconnected for any reason, the proper Duke rate shall be applied when the customer is reconnected.

[1] The term "rate" when used in the Commission's rules and regulations means and includes … "every compensation, charge, toll, rental and classification, or any of them, demanded, observed, charged, or collected by any electrical utility for any electric current or service offered by it to the public, **and any rules, regulations, practices or contracts affecting any such compensation, charge, toll, rental or classification**." (emphasis added) S.C. Code Ann. Regs. 103-302(9)

An Order of the Commission remains in force until changed or revoked by the Commission. S.C. Code Ann. §§58-27-2100, 58-27-2120; S.C. Code Ann. Regs.103-3009(A). An Order can also be altered by the Appellate Courts of this state through judicial review pursuant to S.C. Code Ann. § 58-27-2310. (*See Pee Dee Elec. Co-op. v. Public Service Comm'n*, 229 S.C. 155, 92 S.E.2d 171, 174 (S.C., 1956); *Petroleum Transp., Inc. v. Public Service Comm'n*, 255 S.C. 419, 179 S.E.2d 326 (S.C. 1971).

In *Payne*, the Supreme Court was asked to interpret Order E-976 and determine whether a customer on the Greenwood Rate could be transferred to the Standard Duke Rate if the customer's power had been "disconnected for any reason." The Court rejected this interpretation and concluded that an "existing" connection (i.e. a customer connection predating Duke's acquisition of the Greenwood system in 1966) only became a "new" connection if there had been a change in the "character of the connection" (e.g. from single to three phase) or a change in the use of the premises (e.g. from residential to commercial). It held that changes of this sort were sufficient to call what had been an "existing" connection a "new" connection. While the Court's holding listed two situations when an "existing" connection could legally be considered a "new" connection, it did not state that these were the only situations under which a customer could be removed from the Greenwood Rate. As a result, the Commission retains jurisdiction to elaborate on what other types of changes to a connection are sufficient to remove a customer from the Greenwood Rate, as long as those holdings are not inconsistent with *Payne*.

Since the 1991 decision in *Payne*, the Commission has not, of its own volition, instituted proceedings to clarify, modify, or expand the standards for identifying actions, which constitute changes in use of a premise or change in the character of a connection. Nor has the Respondent, DEC, in its Annual Filing[2] with the Commission and ORS submitted a copy of its policies and practices in transferring customers from the Greenwood Rate to the Duke Rate.[3]

The Petitioner presented his case at a hearing held in the offices of the Commission on April 5, and April 19, 2017, where it received testimony from the Parties. The Honorable Swain E. Whitfield, Chairman of the Commission, presided. David Stark, Esquire, served as Commission Counsel. The Petitioner was represented by John J. Fantry, Jr., Esquire, and Alexander G. Shissias, Esquire. The Respondent was represented by Frank R. Ellerbe, Esquire.

[2] SC Code Ann Regs 103-312(A)(2).
[3] Late filed Hearing Exhibit 9.

ORS was represented by Jeffrey M. Nelson, Esquire. Tommy McCutcheon and his wife Carolyn McCutcheon testified on behalf of Petitioner along with James R. Calhoun, who testified as an expert witness. Testifying on behalf of Respondent were Douglas T. Fowler, Jr., Supervisor of Construction and Maintenance, Jesse S. Gonzalez, B Class Distribution Lineman, Theo Lane, Government and Communications Relations Manager, and Joel Lunsford, General Manager for Construction and Maintenance, who testified as an expert witness. Testifying on behalf of ORS was April Sharpe, Program Manager, Consumer Management Department.

IV. FINDINGS OF FACT

1. Petitioner's Drive-In is a premise[4] supplied with electric power by Respondent. The premise has been in existence since the 1950's. The premise originally had one screen, as well as a concession stand with commercial kitchen equipment, using single phase current on the same breaker system and meter on the Greenwood Rate. The premise has two weatherheads for the point of connection[5] with 400 amp circuit breakers.[6] In or around 1992, the original owner of the premise ceased showing movies but maintained her Greenwood Rate electric account with Respondent until sale of the property.[7]

2. The Petitioner acquired the theater property in 2008, and moved the account into his name. He started renovating the Drive-In and resumed operation in 2009. From 2009 until June of 2015, Petitioner was under the Greenwood Rate (Tommy McCutcheon Testimony Tr. pp. 28-31).

3. Petitioner's renovations were as follows:

a) During the period of 2009 to 2014, he purchased modern kitchen equipment for concession stand. Other than a refrigerator purchased approximately two years ago, the last piece of modern kitchen equipment installed was in 2014. (Tommy McCutcheon Testimony Tr. pp. 32-34, 52-54) The kitchen equipment consisted of fryers, grills, hot dog machines, a popcorn popper, equipment for fountain drinks, and refrigerators. (Tommy McCutcheon Testimony Tr. pp.33-34, 47, 52-54)

[4] SC Code Ann § 58-27-610(2)
[5] Hearing Exhibit 8 p. 2
[6] Calhoun Testimony Tr. p, 94 and Lunsford Testimony Tr. p. 257
[7] McCutcheon Testimony Tr. p. 46

b) At the time of purchase, the premises had a single projector. From 2009 to late 2014, the Petitioner used two film projectors using xenon arc technology running on 60-amp breakers. (Tommy McCutcheon Testimony Tr. pp. 42-43) Petitioner added a second screen in 2013. (Tommy McCutcheon Testimony Tr. p. 45) A third screen was added in 2016; but, as this occurred after the incidents which gave rise to this case, that addition is not relevant to this case.

c) Petitioner went over to digital projectors in 2015, which consume less power than xenon arc technology (Tommy McCutcheon Testimony Tr. pp. 43, 45-46).[8]

d) From 2009 onward, the character of Petitioner's business and the nature of its power consumption has not materially changed. It operates only after dark; and, during that time, its concession stand is also cooking and serving food (McCutcheon Testimony Tr. p. 32-34). Annual kWh consumption was over 40,000 in 2009, rose in 2010, 2011, and 2012, and during 2012 was over 50,000 kWh. Consumption fell to 50,000 kWh in 2013, then shot up to over 60,000 in 2014. Power use fell in 2015 to just over 40,000 kWh. (Hearing Ex. 6) During this period annual energy use "…pretty much stayed the same, average."[9] (Lunsford Testimony Tr. p. 264, lines 10-11)

4. The utility provider is required to size the facilities it uses to serve the customer based on the customer's load (Calhoun Testimony Tr. p. 94). When a line is sized for a new connection or repair, Respondent tries to determine the actual load the customer has, and tries to determine what the peak load would be if they have everything running (Fowler Testimony Tr. p. 151). In 2009, Petitioner had an outage which was repaired by putting in a larger fuse and April 9, 2009 DEC replaced the existing 15kVA transformer with a 25kVA transformer to handle the load of Petitioner's Drive-In and two adjacent customers (Fowler Testimony Tr. p. 153). Respondent's work report reflects the transformer was installed without changing the existing service wire from the transformer to the connection point.[10] Respondent had no further problems with the connection until May 30, 2015 (Fowler Testimony Tr. p. 156).

5. On May 30, 2015, the Drive-In experienced a power outage. DEC staff concluded the service cable had melted, and replaced it by splicing in a section of new cable (McCutcheon Testimony

[8] Each digital projector pulls 40 amps (McCutcheon Testimony Tr. p. 46)
[9] Hearing Exhibit 8 p. 1
[10] Hearing Exhibit 5 p. 4

Tr. p. 36, Hearing Ex. 5, Fowler Testimony Tr. p. 118). The original cable was a single strand of 2/0 cable (Lunsford Testimony Tr. p. 247). DEC presented no witnesses on how the cable was repaired on May 30; it only presented exhibits discussing its repair (Hearing Ex. 5). Petitioner denies that the wires melted because of changes made on his side of the connection point (McCutcheon Testimony Tr. p. 25). Petitioner's expert denied that the wire's failure was caused by equipment at the Drive-In or the equipment's load (Calhoun Testimony Tr. pp. 84-85). Experts for both Parties testified that the reason for the failure was the cable (Calhoun Testimony Tr. pp. 83-84, 98, Lunsford Testimony Tr. pp. 246-7). However, the experts disagreed over the reason the cable failed. Petitioner's expert testified that the cable had deteriorated over time, and that failures generally occur where connectors are installed. He testified that the connectors on the cable heated up, melted through, and caused the cable to fail (Calhoun Testimony Tr. pp. 98, 104). DEC's expert testified that the cable was overloaded and that "thermal overload" caused the cable to fail (Lunsford Testimony Tr. pp. 246-7).[11]

6. The Drive-In experienced a power outage two weeks later on June 13, 2015 (Fowler Testimony Tr. p. 112). Jesse Gonzalez testified on the condition of the cable when he worked on it on June 13 (Gonzalez Testimony Tr. pp.161-163). He testified that the cable splice that had been installed on May 30 could have been a 1/0 gauge cable (Gonzalez Testimony Tr. p. 183). He testified that "[M]ost of the time, when 2/0 goes, if we had a splice and had to make it 2/0, we use 1/0 because we don't have 2/0 anymore." (*Id.* at lines 11-13)[12] He repaired the second failure by splicing in a length of 4/0 cable (Gonzalez testimony Tr. pp. 183-4).

7. On Monday, June 15, Tommy Fowler went to the Drive-In, inspected the connection, determined there was a safety issue and that an upgrade was necessary.[13] He notified Theo Lane of the situation at the Drive-In (Fowler Testimony Tr. pp. 113-4). That same day, Mr. Lane notified Petitioner that a larger line was needed to serve the Drive-In, and that this was an "upgrade." He notified Petitioner that this "upgrade" would result in the Drive-In being removed from the Greenwood Rate and placed on the Standard Duke Power Rate. He notified Petitioner

[11] This "thermal overload" did not occur until June of 2015, in spite of the fact that KWH usage in 2014 was much higher than in 2015. (Hearing Ex. 6).
[12] 1/0 cable can only carry up to a 150 amp continuous load, as opposed to 2/0 cable which can carry up to a 185 amp continuous load (Lunsford Testimony Tr. p. 274)
[13] It was eventually going to melt again behind the 4/0, because you've got the 2/0 there. So the 2/0 was still there; it's just going to melt back a little bit further away from the building. (Fowler Testimony Tr. p. 149)

that if he would not allow DEC to perform this work, DEC would have to disconnect the electric service to the Drive-In (Lane Testimony, Tr. pp. 200-202).

8. Petitioner disagreed, and refused to allow DEC to enter the property to perform work on the connection. (Tommy McCutcheon Testimony Tr. pp. 29-30) Ms. McCutcheon filed a Complaint with ORS on June 16, 2015 complaining that DEC was threatening to disconnect power and attempting to remove Petitioner from the Greenwood Rate (Carolyn McCutcheon Testimony Tr. p. 61). DEC disconnected power to the Drive-In on June 17, 2015 (Lane Testimony pp. 201-2). Mr. Lane testified he was aware of the ORS Complaint on June 17th (Lane Testimony Tr. p. 210). On June 17, DEC's agents required McCutcheon to sign an agreement saying that he voluntarily agreed to the upgrade (Tommy McCutcheon Testimony Tr. p.30, Carolyn McCutcheon Testimony Tr. pp. 62-3, Hearing Ex. 7). Mr. Lane testified Duke would not have reconnected service unless McCutcheon agreed to the upgrade (Lane Testimony Tr. pp. 211-214).

10. Power at the Drive-In was reconnected in the afternoon of June 18, 2015. (Lane Testimony Tr. p. 202) DEC staff concluded that the entire length of cable needed to be replaced with larger cable. DEC staff installed 2 4/0 cables serving the Drive-In,[14] and increased the size of the transformer serving the Drive-In and two adjacent property owners (Lunsford Testimony Tr. pp. 259, 254). As the transformer also serves other customers, the only DEC equipment specific to the Drive-In and to no other customers was the cable.

11. On June 18, DEC provided ORS staff with a copy of the agreement McCutcheon had signed and notified ORS that power to the Drive-In had been restored. That same day ORS staff contacted Ms. McCutcheon about her Complaint and whether DEC had restored power to the Drive-In. Ms. McCutcheon confirmed the power was back on, but she did not state that she was satisfied with the outcome of the Complaint (Carolyn McCutcheon Testimony Tr. p. 63). ORS closed the file that same day (Hearing Ex. 3, Ex. p. 4).

12. On July 29, 2015 Ms. McCutcheon called ORS to check on the status of her Complaint. ORS staff notified her that the file had been closed (Hearing Ex. 3 at p. 4, Carolyn McCutcheon Testimony Tr. p. 63).

[14] Two strands of 4/0 cable can carry a continuous demand load of 350 amps (Lunsford Testimony Tr. p. 259).

13. DEC staff testified that changing a connection to a thicker cable constitutes a change in the service connection, an upgrade, and would result in the customer losing the Greenwood rate (Lane Testimony Tr. pp. 207-208). Mr. Lane testified that DEC has an official policy detailing what circumstances would result in a customer losing the Greenwood rate, though DEC did not present a copy of that policy at the hearing (Lane Testimony Tr. pp. 204-206). Respondent did provide a copy of this document after the hearing (Late Filed Hearing Ex. 9). However, it was not introduced by any witness and there was no testimony concerning the document. There is no indication in the record that DEC ever submitted this policy to the Commission or the Office of Regulatory Staff.

V. EVIDENCE AND CONCLUSIONS

1. Based upon the Findings of Fact in Paragraph 1 above we conclude the 25 Drive-In's connection to the Greenwood County Electric Power Commission's electric lines in the 1950's was through dual weatherheads on a 400 amp breaker system which served equipment common to the Drive-In Theater industry. Respondent took the customer and its energy requirements in an "as is" condition when it purchased the Greenwood County Electric Power System, including annual kilowatt hour need and demand for the equipment as constructed by the customer within the customer's premise.
2. Based upon the Findings of Fact in Paragraph 2 above, we conclude that the Petitioner took the premise in an "as is" condition limited to the load restrictions as determined by the capacity of the breaker system and interior wiring at the time of purchase.
3. Based upon the Findings of Fact in Paragraph 3(a) above, we conclude that the kitchen equipment installed were the normal and customary items installed for Drive-Ins, which operated on single phase current, without requiring Petitioner to increase the size of wiring or breakers within his premise. We further conclude, based upon the Findings of Fact in Paragraph 3(b) above, that Petitioner's operation of two projectors, equipment with xenon arc technology running on 60-amp breakers single phase current rather than the single projector equipment with xenon arc technology running on 60-amp breakers single phase current used by the previous owner did not require Petitioner to increase the size of wiring or breakers within his premise. We conclude, based upon the Findings of Fact in Paragraph 3(c) that the use of three digital projectors running on 40 amp breakers

on single phase current creates a similar electric demand as two projectors using xenon arc technology running on 60-amp breakers on single phase current, which did not require Petitioner to increase the size of the wiring or breakers within his premise.

4. The facts, as set forth in Paragraph 4 above, are in keeping with an electrical utility's duties under S.C. Code Ann. Regs. 103-347. In May of 2009, Respondent estimated the Petitioner's demand load to be similar to the premise Greenwood Electric Power Commission connected in the 1950's and only put in a 25kVA transformer for power needs of the three customers, but left unchanged the wires forming the Petitioner's service drop. The 2/0 wire in the service drop has been in service for over 50 years without failure, from the 1950's until May 30, 2015.
5. Based upon the Findings of Fact in Paragraph 5 above, we conclude that the failure of a wire in the service drop caused the outage on May 30, 2015. We further conclude that the wire, by design, would fail when energy demand exceeded 185 amperes for an extended period of time.
6. Based upon the Findings of Fact in Paragraph 6 above, we conclude that melting of a wire in the service drop caused the outage of June 13, 2015 and was repaired by replacing the melted wire with a piece of 4/0 wire. Based upon the testimony of Mr. Gonzalez, we conclude that the outage on June 13, 2015 could have resulted from DEC's staff replacing the melted 2/0 wire with a piece of thinner 1/0 wire with a lower load rating on May 30, 2015.
7. Based upon the Findings of Fact in Paragraph 7 above, we conclude that on June 15, 2015 DEC determined that Petitioner's service drop needed to be 4/0 wire instead of 2/0 wire. We further conclude that Mr. Fowler and Mr. Lane determined, in accordance with DEC policy, that the installation of larger wire on DEC's side of the weatherhead disqualified the premise from the Greenwood Rate. Mr. Fowler and Mr. Lane determined, based on DEC policy, that service to the Drive-In would be terminated unless Petitioner allowed the work to be done and acquiesced to the rate change. They notified Mr. McCutcheon of DEC's decision.
8. Based upon the Findings of Fact in Paragraph 8 above, we conclude that Petitioner properly exercised his customer rights pursuant to S.C. Code Ann. Regs. 103-345(B) and that Respondent cooperated with ORS's investigation during the pendency of the ORS

inquiry. We further conclude that the customer's act of signing the June 17 agreement does not preclude him from pursuing a complaint with ORS and the Commission. The Commission still retains the authority to determine if the actions of an electrical utility follow an approved rate policy and is consistent with the Commission's prevailing rate Orders.

9. Based upon the Findings of Fact in Paragraph 9 above, we conclude that Respondent installed larger wires to its service drop to comply with Respondent's estimate of electric demand under peak load in conformity with S.C. Code Ann Regs. 103-360. We further conclude that the safety of persons and property alone does not relieve an electrical utility from the responsibility to deliver reliable service in accordance with approved rates and service policies under S.C. Code Ann. §58-27-840 and S.C. Code Ann. Regs.103-303.
10. Based upon the Findings of Fact in Paragraph 10 above, we conclude that in June of 2015 Respondent installed 4/0 wire from the transformer to Petitioner's weatherheads for the benefit of the Drive-In alone and installed the larger transformer for the benefit of the Drive-In as well as two adjacent property owners.
11. Based upon the Findings of Fact in Paragraph 11 above, we conclude that ORS closed the file on June 18, 2015 based upon its receipt of a copy of the June 17 agreement and a call to Ms. McCutcheon where she confirmed electric service had been restored to the Drive-In.
12. Based upon the Findings of Fact in Paragraph 12 above, we conclude that, despite DEC's reconnection of service, Petitioner denied he had voluntarily agreed to the rate change. We further conclude that ORS' determination that a Complaint is settled and the facts supporting ORS' opinion are not binding on the Commission. The Commission is the ultimate fact-finder in a Complaint or a Rate Case. *Utilities Serv. of S.C. Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 708 S.E.2d 755 (S.C. 2011)
13. Based upon the Findings of Fact in Paragraph 13, we conclude that DEC has developed a service policy for disconnection from the Greenwood Rate, based upon a customer's "energy demand" and "peak load." These are two standards never addressed in Order 976 or in *Payne v. Duke Power Co.* We further conclude that DEC failed to bring the service policy before ORS and the Commission prior to making the policy effective in violation

of S.C. Code Ann. Regs. 103-303 B, R. 103-312 (1) and (2)(A), and S.C. Code Ann. §§ 58-27-820, 830.

14. Based upon the record as a whole, we cannot conclude that Respondent disconnected Petitioner's electric service in violation of S.C. Code Ann. Regs. 103-342 under the circumstances. Respondent had concerns over the safety of the connection.
15. We conclude that the act of merely changing of the size of an electric wire on the DEC side of the customer's weatherhead is not a "change in the character of the connection" unless the customer has made changes to the system on the customer's side of the connection in excess of the capacity of the breaker and wiring system that were installed within the premise when the account was first transferred from Greenwood County Electric Power Commission to DEC. In this case, Petitioner's premise had a 400 amp breaker system when it was first connected to DEC and the need for DEC to install a larger wire was not because Petitioner had made a change that can properly be called a "change in the character of the connection."
16. We conclude DEC violated Order 976 in changing Petitioner from the Greenwood Rate to the Standard Duke Rate, based on a change to the service drop from 2/0 wire to 2 4/0 wires, and in utilizing the service policy admitted as Late Filed Hearing Exhibit 9 without first filing it with ORS and without first requesting approval of the policy by the Commission.
17. At the close of the Hearing, DEC offered and the Commission took as information the 1990 circuit court order in the case that upon appeal, resulted in the Supreme Court's issuance of its decision in *Payne v. Duke Power Co*., 304 SC 447, 405 S.E. 2d 399 (1991). DEC requested that the Commission take "judicial notice" of the findings and conclusions in the circuit court order, over Petitioner's objections. We conclude that the doctrine of judicial notice is inappropriate here. Judicial notice only pertains to facts such as matters of common knowledge or matters capable of certain verification. *McCormick on Evidence*, §§ 329 and 330. It is not appropriate for legal conclusions, as DEC has urged it to be used for. Alternately, it could be presented as a form of persuasive authority, as DEC argued that in *Payne*, on the issue of change of character of connection, the Court held:

> …we agree with the trial court that a change in either the character of the connection (e.g. from single to three phase) or use of the premises (e.g. from residential to commercial) constitutes a new connection effectuating a transfer to Duke rates. As stated in the contract, 'the rates to be charged . . . for connections after the date of the sale shall be the applicable rates of Duke Power Company.'
>
> *Payne,* 405 S.E.2d at 402-3.

DEC argued that the Commission should look to the circuit court order to determine to what extent the Supreme Court "agreed" with the trial court as to what constitutes a "new" connection for the purposes of interpreting Order 976. However Petitioner noted that while the 43 page circuit court order mentioned a number of situations that constituted a "change of character of the connection" or "change in use of the premises," the 4 page Supreme Court order only adopted one example noted by the circuit court, namely, the "change in use from residential to commercial." Oddly, the circuit court order does not mention a change from single to three phase service as a "change in character of the connection" at all; this is only mentioned in the Supreme Court's order. Petitioner argued that to the extent the Supreme Court only cited one instance constituting a "new" connection that was cited by the circuit court, and noted one that the circuit court had never mentioned, there is nothing that the Commission can glean from the circuit court order. At any rate, to allow the holding of the circuit court to inform the decision of the Commission would be improper, as the Commission has primary jurisdiction over this and other rate matters as the District Court noted in *Wanning v. Duke Energy Carolinas*, C/A No. 8:13-839-TMC (D.S.C. Jun. 5, 2013).

> The Supreme Court has distinguished exhaustion of administrative remedies and primary jurisdiction and clarified that primary jurisdiction applies where a claim is originally cognizable in the courts, and comes into play when enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body. *Reiter v. Cooper*, 507 U.S. 258, 268 (1993).

Here the Commission has primary jurisdiction over this and other ratemaking matters. We will not consider the circuit court decision as persuasive authority in this case. Should DEC wish to adopt a policy on when a connection is legally considered a "new" connection it must follow the statutory and regulatory process for doing so.

CONCLUSION

It is hereby Ordered and Decreed:

1. The Claim against DEC for improper disconnection in violation of S.C. Code Ann. Regs. 103-345(B) is dismissed.
2. The Commission finds that DEC violated Order 976 by changing Petitioner's rate without there being a "change in the character of the connection" as per the holding in *Payne*.
3. The Commission finds that DEC violated S.C. Code Ann. Regs. 103-303 B, R. 103-312 (1) and (2)(A), and S.C. Code Ann. §§ 58-27-820, 830 by bringing its service policy into effect without first filing it with ORS and without obtaining approval from the Commission.
4. The Commission finds that DEC overcharged, or charged Petitioner an excessive amount for service, and pursuant to S.C. Code Ann. § 58-27-960 and S.C. Code Ann. Regs. 103-304 DEC is ordered to make reparation or repayment to Petitioner in the amount of the difference between what he would have been charged from June 18, 2015 to the present under the Greenwood Rate versus the rate he has been paying under the Duke Rate. DEC shall, within fifteen (15) days of the effective date of this Order, submit to the Commission an accounting of the amount of its overcharge, which shall upon approval of the Commission be incorporated into this Order.
5. The Commission finds that DEC has failed, omitted or neglected to comply with a lawful Order of the Commission, namely Order 976, and pursuant to S.C. Code Ann § 58-27-2410 assesses a $100.00 penalty, and awards Petitioner reasonable Attorney's fees and costs of this action. Petitioner shall, within fifteen (15) days of the effective date of this Order, submit to the Commission an accounting of its Attorney's fees and reasonable costs, which shall upon approval of the Commission be incorporated into this Order.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

_____
Swain E. Whitfield, Chairman

ATTEST:

_____
Comer H. Randall, Vice Chairman

(SEAL)